

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





# 75-2077

To be argued by  
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
LARRY STANLEY CROSSLEY,

Appellant.

-against-

UNITED STATES OF AMERICA,

Appellee.  
-----x

B  
P/S  
Docket No. 75-2077

---

## APPENDIX TO APPELLANT'S BRIEF

---

ON APPEAL FROM AN ORDER  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
LARRY STANLEY CROSSLEY  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

MICHAEL YOUNG,  
Of Counsel.

PAGINATION AS IN ORIGINAL COPY



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(2) JUDGE WYATT

71 CRIM. 697

TITLE OF CASE

## ATTORNEYS

vs.

JOHN A. LOWE, AUSA

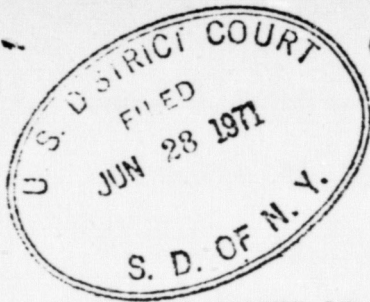
For Defendant:

DATE	PROCEEDINGS
6-28-71	Filed consent to transfer for plea and sentence under Rule 20 and Indictment(Rec'd from Northern District of Illinois-their number--71Cr3).
6-28-71.	Deft. (atty. present) Deft. Pleads Guilty. Pre-sentence report ordered. Sentence adjourned to 8-17-71 at 10:30 A.M. Deft. remanded. WYATT, J.
8-23-71.	Filed Judgment(atty. present) It is adjudged that the defendant is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN(15) YEARS to run concurrently with the sentence imposed this day on indictment 71 Cr 441. WYATT, J. Issued commitment and copies.
9-1-71	Filed remand entry 6-28-71.

-Over-







UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

71 CRIM. 697

JUDGE MAROVITZ

FILED

71 CR 3

1971 JAN 5 PM 12 31

UNITED STATES OF AMERICA

No.

vs.

Violation: Title 18, United States  
Code, Sections 2113 and  
2113(d)

LARRY STANLEY CROSSLEY

U.S. DISTRICT COURT

JUDGE WYATT

The JANUARY 1971 GRAND JURY charges:

On or about September 29, 1970 at Chicago in the Northern  
District of Illinois, Eastern Division,

LARRY STANLEY CROSSLEY

defendant herein, did by force, violence and intimidation, knowingly  
and willfully take from the person and presence of Theresa Hicks, an  
employee of the Guaranty Bank and Trust Company, Chicago, Illinois,  
the deposits of which were then and there insured by the Federal  
Deposit Insurance Corporation, a sum of money, approximately \$7,971.00,  
which money was then and there in the care, custody, control, manage-  
ment and possession of the Guaranty Bank and Trust Company, and in  
committing said offense the defendant did assault and put in jeopardy  
the life of said Theresa Hicks, an employee of the Guaranty Bank and  
Trust Company, by the use of a dangerous weapon, to wit: a revolver;  
in violation of Title 18, United States Code, Sections 2113(a) and  
2113(d).

A TRUE BILL:

*Herman C. Washburn*  
FOREMAN

*William J. Bauer*  
UNITED STATES ATTORNEY



FILED

1971 JAN 5 PM 12 31

CLERK  
U.S. DISTRICT COURT

71 CRIM. 441  
JUDGE WYATT

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

THE UNITED STATES OF AMERICA

vs.

Larry Stanley Crossley

INDICTMENT

Title 18, United States Code,  
Sections 2113(a) and 2113(d)

A true bill,

*William B. Blackstone*  
Treasurer

Filed in open court this 576 day  
of January, A.D. 1971

*W. Stewart Cunningham*  
Clerk

Bail, \$150,000.

DISTRICT COURT

JUN 28 1971

GPO 902-482

LOWE, A.U.S.A.

JUN 28 1971

Deft & Atty David Blackstone present. Deft pleads GUILTY. F.S.I. ordered.  
Sentence adjourned to August 17 at 10:30 AM. Deft. REMANDED (no bail)

WYATT, J.

Aug. 23, 1971

Deft sentenced to 15 yrs to run concurrently with sentence  
imposed this day on Indictment 71 CR. 441. Remanded -  
att'y for deft David Blackstone  
Wyatt, J.

JUDGE WYATT

71 CRIM. 441<sup>(1)</sup>

ATTORNEYS

*For U. S.:*

vs.

JOHN A. LOWE, AUSA

LARRY STANLEY CROSSLEY

*For Defendant:*

DATE	PROCEEDINGS
4-28-71	Filed Indictment.
4-29-71	Pleading adj'd to 5-3-71. BONSAL, J.
5-3-71	Pleads not guilty. Deft. remanded in lieu of bail fixed at \$5,000. Motions ret. in 10 days. MC GOHEY, J.
6-11-71	Filed copy of def't's notice of motion for B/P (WYATT, J.)
6-11-71	Filed CIA Form 2 order appointing counsel, David Blackstone, Esq., 401 B'way, N.Y.C. Phone: 226-6684. (mailed copy to Adm Off Wash D.C.) WYATT, J.
6-11-71	Filed memorandum denying motion of def't. for bill of particulars. So Ordered-Wyatt, J. (notice mailed)
<del>XX</del>	
6-21-71	Filed memo-endorsed on motion dated 6-18-71, "A hearing was held on this motion in open court on June 18, 1971. Motion is denied. so ordered. WYATT, J.



DATE	PROCEEDINGS
6-18-71	Deft (atty present) withdraws his plea of not guilty and now PLEADS GUILTY to the Indictment. Pre-sentence investigation ordered, sentence Aug 17, 1971 at 10:30 A.M. Deft remanded, no bail. WYATT, J.
6-21-71	Filed CJA form 4 voucher for compensation (mailed orig.) WYATT, J.
8-23-71.	Filed Judgment (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS to run concurrently with the sentence imposed this day on indictment 71Ce6. Issued commitment and copies. WYATT, J.
9-1-71	Filed CJA Form 20 voucher for compensation (mailed orig.) WYATT, J.
9-1-71	Filed remand dated 6-18-71.
10-5-71	Filed Transcript of record of proceedings, dated June 18, 28, 1971.
10-21-71	Filed Commitment & entered return, Deft. Delivered to the 9-1-71 U.S.P. LEWIS BARR.
1-20-72	Filed letter dated 12-19-72 from deft. to Judge Wyatt and decision dated 1-20-72 by WYATT, J. * * * is treated as a motion to reduce sentence under Fed. R. Crim P. 35 and is denied, both because it is <del>untimely</del> untimely and because it is without merit. So. Ordered. (Notice mailed.)
2-9-73	Filed defts. affdvt and notice of motion for a full bill of particulars with memo attached: The motion is denied - So ordered. -- Wyatt, J. (m/n by pro-se clerk)
1-31-75	Filed deft's. affidavit & notice of motion to obtain documents In Forma Pauperis, pursuant to Title 28, U.S.C. Section 1915.
1-31-75	Filed MEMO ENDORSED on deft's. motion filed 1-31-75. This motion is denied for want of any sufficient showing. SO ORDERED.....Wyatt, J. (notice mailed by Pro Se Clerk)

71 CRIM. 441

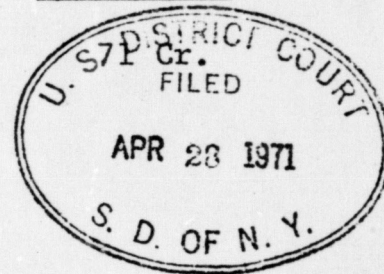
UNITED STATES OF AMERICA

-v-

LARRY STANLEY CROSSLEY,

Defendant

INDICTMENT



The Grand Jury charges:

On or about the 11th day of January, 1971,  
in the Southern District of New York, LARRY STANLEY CROSSLEY,  
the defendant, unlawfully, wilfully and knowingly, by force  
and violence and by intimidation did take and attempt to take  
from the person and presence of certain tellers of the  
Yorkville Savings and Loan Association, 1640 Second Avenue,  
New York, New York, a sum of money belonging to and in the  
care, custody, control, management and possession of said  
savings and loan association, the deposits of which savings  
and loan association were then insured by the Federal  
Savings and Loan Insurance Corporation; and, that in  
committing and attempting to commit the offense charged  
the defendant did assault and put in jeopardy the life  
of certain persons, to wit, the employees and customers of  
said savings and loan association, by the use of a dangerous  
weapon, to wit, a pistol.

(Title 18, United States Code, Section 2113 (a)

and (d) )

*Betty J. Campbell*  
Foreman

*Whitney North Seymour, Jr.*  
WHITNEY NORTH SEYMOUR, JR.



# United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

LARRY STANLEY CROSSLEY,

Defendant

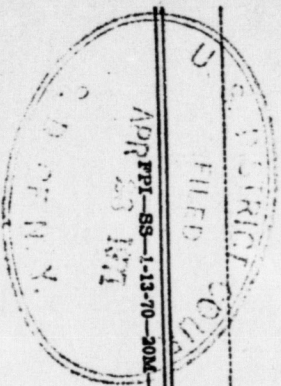
## INDICTMENT

In violation of Title 18  
United States Code, Section  
2113 (a) and (d) ).

WHITNEY NORTH SEYMOUR, JR.

United States Attorney.

A TRUE BILL



Foreman.

MAY 3 - 1971

*Blacks not guilty*

DEFT. REMAINED IN CUSTODY OF BAIL FIXED AT \$5000.00

*motion set in 10 days.*

*W. H. H. J.*

*MAV*  
*Deposed*

Low E. A. U.S.A.

MAY 18 1971

*Defendant and his Blackstone parent. With  
withdraw his plea of not guilty and now  
pleads guilty to the indictment. P.S. &  
ordered, sentence Aug. 17, 1971 at 10:30 AM.  
Def. Remanded, no bail.*

AUG 23 1971

*(Blackstone, Jr.)*

*Def. sentenced to 15 yrs in ct. 1 of indictment  
71 CR. 441 at a place of confinement to be designated by the  
city General. Def. also sentenced to 15 yrs in ct. 1 of  
indictment 71 CR. 697 from the Northern Dist. Court. All orders  
to run concurrently with ct. 1 in indictment 71 CR. 441.*

*Rudolph, Jr.*

*Wyatt, J.*

IN THE UNITED STATES DISTRICT COURT  
THE SOUTHERN DISTRICT OF NEW YORK

FOLEY SQUARE, NEW YORK, N.Y.

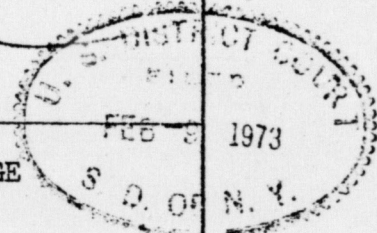
LARRY S. CROSSLEY  
DEFENDANT

-vs.-

UNITED STATES OF AMERICA  
PLAINTIFF

RE: 71-111 & 71-697

TO: THE HONORABLE INZER B. WYATT, JUDGE  
UNITED STATES DISTRICT COURT



MOTION FOR FULL BILL OF PARTICULARS IN  
THE ABOVE NUMBERED CAUSE

Comes now, LARRY S. CROSSLEY hereinafter known as  
the Petitioner, in the above styled cause of action to com-  
pel the United States Government to issue a Full Bill of  
Particulars in the matter United States V. LARRY S. CROSSLEY  
That this Full Bill shall include a copy of the arrest war-  
rant, the indictment, the transcript of arraignment, the  
~~transcript of the trial, or the transcript of plea, and the~~  
transcript of sentence. That this Full Bill shall include  
the affidavits of the witnesses who testified in this matter  
or before this Court.

Dated: 2/7/73

S/ Larry S. Crossley  
LARRY S. CROSSLEY  
Defendant's Name  
Petitioner Pro-se



---

MEMORANDUM IN SUPPORT OF BRIEF

---

LARRY S. CROSSLEY

Now comes, \_\_\_\_\_, hereinafter known as the  
Petitioner in the above styled cause of action, and prays  
this Honorable Court to grant him the copies of the before  
mentioned documents. Petitioner honestly and truly be-  
lieves he has just cause in seeking these and does not in-  
tend to waste the valuable time of the Court by engaging  
in a fishing expedition.

S/ Larry S. Crossley  
LARRY S. CROSSLEY

AFFIDAVIT IN FORMA PAUPERIS

Petitioner states that he is, at present, incarcerated in the Federal Penitentiary at Terre Haute, Indiana, under pain of sentence.

Further, that he is unable to pay the fees of the filing of the foregoing Motion. He is indigent and has no property stocks, bonds, nor United States currency.

Therefore, Petitioner prays this Honorable Court to grant him leave to proceed in forma pauperis, quareteed by the 14th Amendment to the United States Constitution.

S/ Larry S. Crossley  
LARRY S. CROSSLEY  
Defendant's name  
Affiant

SUBSCRIBED and SWORN to before me this 7th day of February  
1973

(Authorized Agent under Title 18  
Section 4004.

Ray L. George  
United States Parole Officer



AFIDAVIT PROOF OF SERVICE

STATE OF INDIANA )  
COUNTY OF VIGO )

I, LARRY S. CROSSLEY in the above listed and styled cause of action, do hereby swear that on the below listed date, a true copy was delivered to the authorized agent by the United States Mail from the United States Penitentiary, Terre Haute, Indiana, 47808.

- 1.) The Honorable INZER B. WYATT,  
United States District Court Judge  
For the SOUTHERN District of NEW YORK, N.Y.  
located at FOLEY SQUARE  
(2 copies)
- 2.) Clerk of the Court for the aforementioned jurisdiction. (1 copy)
- 3.) One copy to the United States Attorney of the aforementioned jurisdiction.
- 4.) One copy to the United States Attorney-General,  
Mr. Richard Kleindienst, Department of Justice,  
Washington, D.C. 20510.
- 5.) One Copy to the SECOND Circuit Court of Appeals,  
located at NEW YORK, N.Y. , Mr. Justice  
MARSHALL presiding.
- 6.) One copy retained by petitioner.

Respectfully Submitted,

Larry S. Crossley  
LARRY S. CROSSLEY  
Defendant's Name  
Petitioner Pro-se

SUBSCRIBED and SWORN to before me this 7<sup>th</sup> day of February  
1973.

Ray L. George, prob. officer

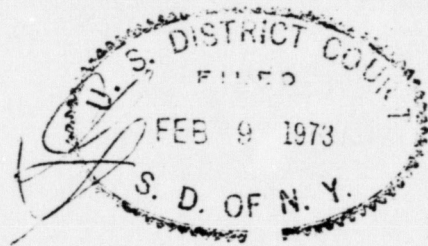
AUTHORIZED AGENT UNDER PROVISIONS OF SECTION 4004 OF TITLE  
18. U.S.C.A.

UNITED STATES OF AMERICA  
-v-  
LARRY STANLEY CROSSLEY

71 Cr. 441

71 Cr. 697 ✓

*file in*



This is a motion by defendant Crossley pro se and by mail for a "full bill of particulars".

Crossley pleaded guilty to bank robbery (18 U.S.C. §§ 2113(a) and 2113(d)) and on August 23, 1971, was sentenced to imprisonment.

Under the existent situation a motion for a bill of particulars, which is directed to the indictment and before trial, is frivolous.

The motion is denied.

SO ORDERED.

Dated: February 9, 1973

*Inzer B. Wyatt*  
INZER B. WYATT  
United States District Judge



C O P Y

In The  
United States District Court  
For The  
Southern District of New York

Larry Stanley Crossley,

Petitioner

vs

Civil Action

United States of America,

Respondent.

Motion to Obtain Documents  
In Forma Pauperis, Pursuant  
To Title 28, U.S.C. Section  
1915

---

Comes now, the Petitioner Larry Stanley Crossley, and moves this Honorable Court under the provisions of Title 28 U.S.C. section 1915 to issue the order for said Petitioner to receive transcripts of his arraignment, and sentencing proceedings, in case number 71 Cr. 697, 71 Cr. 441 (IBW), for the reasons so stated in the attached brief.

Wherefore and Premises considered, your Petitioner in good faith prays this honorable court will grant this motion herein.

Respectfully submitted,

/s/ LARRY S. CROSSLEY  
Petitioner Pro-Se

Copy mailed to U.S. Atty

EMC

Pro Se Clerk

1/31/75

C O P Y

In The  
United States District Court  
For The  
Southern District of New York

Larry Stanley Crossley,

Petitioner,

vs

Civil Action

United States of America,

Respondent.

Affidavit in support of  
Motion to obtain documents

Comes now the petitioner Larry Stanley Crossley, Being duly sworn and states:

1. He is in the custody of the Attorney General of the U.S. at the U.S. Penitentiary, Terre Haute, Indiana.
2. The Petitioner Is serving two (2) fifteen (15) year concurrent sentences imposed by this Court August 21, 1971.
3. The Respondents The United States of America are in violation of Petitioners fifth Amendment Constitutional rights inasmuch as Petitioner was deprived of Due Process Of The Law in both cases.
4. The Petitioner is attempting to file motions into this court Pursuant to Title 28 U.S.C. section 2255, and Petitioner requests the said documents to properly present his contentions.
5. The Petitioner has no funds in which to pay for the documents requested, nor has the Petitioner stock, realestate, or property That he can submit to this court for security in



C O P Y

order to obtain the requested documents

6. The Petitioner Believes he has a right of action, and feels he is entitled to redress to obtain the requested documents.

Respectfully submitted,

/s/ LARRY S. CROSSLEY  
Petitioner Pro-Se

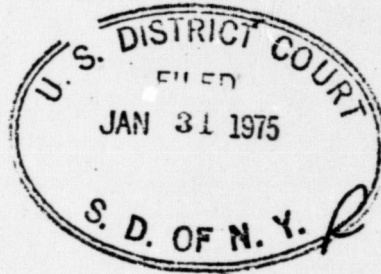
Subscribed & Sworn To  
28th day of Jan. 1975

/s/ S.A.ZANGS, U.S. Parole Officer

Authorized by the Act of July 7, 1955  
to administer oaths ( U.S.C. 4004).

In The  
United States District Court  
For The  
Southern District of New York

MEMO  
ENDORSED



Larry Stanley Crossley,  
Petitioner

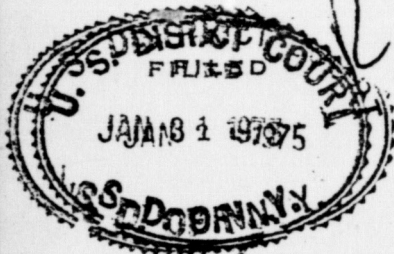
VS

Civil Action

United States of America,  
Respondents

File  
71-26977  
IBW

(83)



*This motion is  
denied for want of  
any sufficient  
showing in support of  
the prayer of the  
petition.*

*So ordered  
USDC  
Jan 31, 1975*

On this day, the Petitioner being duly sworn, and moved this Honorable  
Court under the provisions of Title 28, U.S.C., Section 2015 to grant  
him relief from said Petitioner's relative to the foregoing  
and praying for relief, of and to the effect that the  
Court do grant as stated in the attached prayer.

(IBW)

Wherefore and Petitioner prays that the Court do grant  
him relief as prayed for in the foregoing prayer.

Respectfully Submitted

Larry S. Crossley

MICROFILM  
FEB 3 1975

Copy mailed to  
U.S. Atty

1-31-75  
Eric  
Pike Club



IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

LARRY CROSSLEY,  
PETITIONER

V.

UNITED STATES OF AMERICA,  
RESPONDANT

NOTICE OF APPEAL

Notice is hereby given that the Petitioner Larry Crossley, appeals the order entered against him, in his Motion To obtain transcripts filed January 31, 1975 and denied January 31, 1975, to the UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Petitioner further moves the court to make and enter its order for transmission of portions of the record necessary for the proper review of the case.

Further Petitioner moves this Court to make and enter its order allowing Petitioner to proceed as an indigent person in processing his appeal.

Respectfully submitted

*666 Long Street, Crossley*  
Petitioner Pro-Se

P.O. Box 33  
Terre Haute, Indiana

SUBSCRIBED AND SWORN TO  
BEFORE ME THIS 14 DAY  
OF February 1975

*Ray H. George*  
Parole Officer

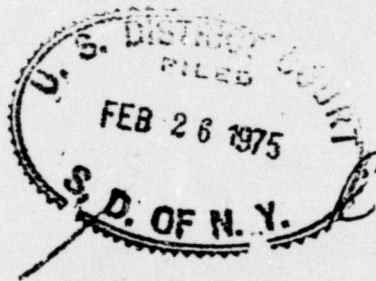
Authorized to take oaths July 7, 1965  
By *Richard L. Smith* (N.Y. S. C. No. 1)

UNITED STATES OF AMERICA

-v-

LARRY STANLEY CROSSLEY,  
Defendant.

71 Cr. 697



This is Petitioner Larry Crossley's (petitioner) "Notice of Appeal", sworn to February 14, 1975, which is treated as a motion for leave to proceed on appeal in forma pauperis. Fed. R. App. P. 24(a) The appeal is from a denial by endorsement filed January 31, 1975, of petitioner's "Motion to Obtain Documents in Forma Pauperis", sworn to January 28, 1975. The "Notice of Appeal" has no affidavit as required by Rule 24(a) to show petitioner's inability to pay, his belief that he is entitled to relief, and the issues presented on appeal; he did attach to his motion to obtain documents an affidavit stating his inability to pay for the documents requested in that motion.

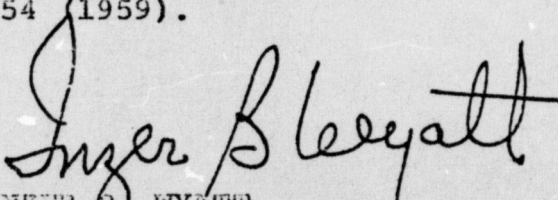
Petitioner pleaded guilty to this indictment charging bank robbery and the use therein of a dangerous weapon (18 U.S.C. §§ 2113(a) and (d)) and on August 23, 1971, was sentenced to a term of 15 years, to run concurrently with a sentence imposed on the same day under another indictment (71 Cr. 441).

In his motion to obtain documents, petitioner sought to "receive transcripts of his arraignment, and the sentencing proceedings", apparently so that he could use them to prepare a motion under the federal habeas corpus statute, 28 U.S.C. § 2255. Petitioner has not yet made a motion under 28 U.S.C. § 2255, has made no factual averments to suggest that he might be entitled to relief under that section, and therefore presented no ground for granting his request for transcripts.

Therefore, petitioner's motion for leave to proceed on appeal in forma pauperis is denied. Since petitioner's motion to obtain documents was made under 28 U.S.C. § 1915, it is certified that an appeal from the order denying that motion is not taken in good faith. In this context good faith is judged by an objective standard and if an appeal is frivolous it is not taken in good faith. Coppedge v. United States, 369 U.S. 438, 445 (1962); United States v. Visconti, 261 F.2d 215, 218 (2d Cir. 1958); cert. denied, 359 U.S. 954 (1959).

SO ORDERED.

Dated: February 25, 1975

  
INZER B. WYATT  
United States District Judge

MICROFILM

FEB 26 1975

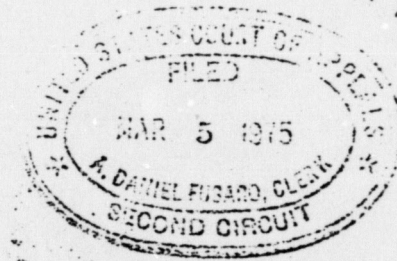


IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

LARRY STANLEY CROSSLEY,  
PETITIONER-APPELLANT

V.

UNITED STATES OF AMERICA,  
RESPONDENT-APPELLEE



MOTION FOR LEAVE TO PROCEED ON APPEAL  
IN FORMA PAUPERIS

Comes now the Appellant, Larry Stanley Crossley, and moves the Court  
under the provisions of title 28 U.S.C. 1915, rule 24 F.R.A.P., to take  
and enter its order allowing him to file an appeal, as an indigent person  
for the reasons so stated in the attached affidavit.

Wherefore the Appellant being without sufficient funds to pay for such appeal  
prays this Court will grant leave so to proceed herein.

respectfully submitted

*Larry Stanley Crossley*  
LARRY STANLEY CROSSLEY  
72560-1586

P.O. BOX 33  
TERRE HAUTE, INDIANA  
47303

A COPY HEREOF WAS MAILED THIS DAY  
OF MARCH 1975 to PAUL J CURRAN, U.S.  
ATTORNEY SOUTHERN DISTRICT OF NEW YORK

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

LARRY STANLEY CROSSLY,  
PETITIONER-APPELLANT

vs.

v.

UNITED STATES OF AMERICA,  
RESPONDENT-APPELLEE

AFFIDAVIT IN SUPPORT OF MOTION  
FOR LEAVE TO PROCEED ON APPEAL  
IN FORMA PAUPERIS

Comes now the appellant, Larry Stanley Crossley, being duly sworn and states for this affidavit:

- 1.) He has no property, real estate, bank account, nor resources of any kind in which can be paid to process the appeal, or give security therefor.
- 2.) Appellant believes he has a right of action in his appeal to this Court, in that the District Court failed to give the Motion to Obtain Documents and attached Affidavit that was filed by Appellant full consideration.
- 3.) Attached hereto is a copy of the Motion, Affidavit, and opinion, rendered against Appellant, in the United States District court, Southern District of New York, by the honorable Inner B. Wyatt, United States District Judge.



Respectfully Submitted

*Larry Stanley Crossley*  
LARRY STANLEY CROSSLEY

PETITIONER-APPELLANT

IND-82 72560-1583

P.O. BOX 33

TERRE HAUTE, INDIANA  
47803

Subscribed and sworn before me this  
7 day of March 1975

*R. L. [Signature]*  
Parole Officer

10.

---

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

---

LEWIS STANLEY COLOSINI  
PETITIONER-APPELLANT

V.

UNITED STATES OF AMERICA  
RESPONDENT-APPELLEE

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

LEWIS STANLEY COLOSINI  
PETITIONER-APPELLANT

---

LEWIS STANLEY COLOSINI,  
PETITIONER-APPELLANT  
P.O. Box 33  
Terre Haute, Indiana  
47603

March 3, 1975



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10.

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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HARRY STANLEY CROSSLEY,  
PETITIONER-APPELLANT

V.

UNITED STATES OF AMERICA,  
RESPONDENT-APPELLEE

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

---

BRIEF FOR APPELLANT

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STATEMENT OF THE CASE

On January 26, 1975 Appellant mailed a motion and affidavit to the United States District Court, Southern District of New York, pursuant to 28 U.S.C. 1915, requesting copies of transcripts of his arraignment and sentencing proceedings of case NO. 71 CR697, 71 CR 141, in which cases Appellant entered a plea of guilty to a violation of title 21, U.S.C. 2113 (a) (d) namely armed bank robbery, and was sentenced thereafter to the custody of the attorney general for two (2) fifteen (15) years terms of imprisonment, said sentences were imposed concurrently. In the aforementioned motion and affidavit, Appellant contended a violation of Due Process, and his need of the above recorded to properly present his contentions to the district Court.

To be late to Appellants knowledge his motion and affidavit was never docketed.

On January 31, 1975 the District Court entered its order denying Appellants motion, said denial was for want of any sufficient showing.

The Appellant on February 14, 1975 filed timely notice of appeal as required by ( Rule 4 F.R.A.P. ), under the assumption that leave to proceed as a pauper had been granted in his original motion to the District Court see ( Rule 24 a-2 F.R.A.P. ).

The District Court on February 25, 1975 entered an order denying Appellant leave to appeal as a pauper, holding Appellants appeal was not in good faith, Appellant now appeals both orders to this Court.

#### LEGAL PRESENTATION

Before embarking on a general inquiry into Appellants contention of error it is necessary to state Appellant had no other means available to obtain the requested transcripts, but through 28 U.S.C., 1915.

That Appellant collaterally attacked his sentence imposed under 28 U.S.C. 2255, Appellant could have requested and maybe received transcription of the requested proceedings under the provisions of 28 U.S.C., 753 or 2250.

Minimal that there was no other provision in the statutory scheme other than 28 U.S.C., 1915 that Appellant could have utilized, Appellant attempted in the district court to carry the burden of showing the court what 28 U.S.C., 1915 requires, (his inability to pay the cost of the relief requested), ( his belief that he is entitled to redress), and (his good faith ).

The District Court entered its order denying Appellants requested for want of any sufficient showing.

In the affidavit attached to Appellants motion in the District Court, Appellant alleged a violation of due process.



This alone in itself was not sufficient to state a claim in which relief could be granted, but Appellant made the contention under the assumption that 28 U.S.C., 1215 was not for the purpose of collateral attack.

The basis of Appellants contention was that the District Court applied the "hearsay and stick theory" to his sentencing proceedings, in that Appellants sentencing proceedings were continued without cause until Appellant testified before the Grand Jury, at which Appellant exercised his right against self incrimination.

Appellant intends to prove from the record, and by remarks of his appointed attorney, and the government, the involuntariness of his guilty plea.

In Smith v. Bennett, 365 U.S. 703, 709 81 S.Ct. 395 396, 6 L.Ed.2d 32, the Supreme Court held:

"The courts must not interpose any financial considerations between an indigent and his right to sue for his liberty".

On the other hand in Blawie v. United States 113 F.2d 957, 960 (8th Cir. 1942)

the court held that:

"A rich defendant may have the right to waste his money on unnecessary and dilatory trial steps, but that does not, in the name of necessary constitutional equality, give the indigent the right to squander government funds merely for the asking."

Even though the basis of appellants due process contention is novel, if proven, Appellant would be entitled to relief.

Appellant has carried his burden of showing his need see *Alfinito v.*

*United States*, 365 F.supp. 508, Yet the District Court failed to make

findings that Appellants request was not in good faith see *United States*

*v. Bailey*, 367 F.supp 173 (1972).

The District Court has taken the position that it will not even consider the affidavit attached to Appellants motion see (order entered by the District Court November 24, 1975 page 2).

COMPLAINT

DEFENDERS AND PETITIONERS WHEREAS, Appellant respectfully request that this Court reverse the orders of the District Court, and remand this case back to the District Court with instructions for further proceedings.

DEFENSEMAN SUBMITTED

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I certify that a duplicate copy of the foregoing brief for Appellant was mailed to The United States Attorney's office Southern District of New York on this 7 day of March, 1975.

*Larry Stanley Crossley*  
Larry Stanley Crossley

Subscribed and sworn before me this

7 day of March 1975

*Eugene T. [Signature]*  
Eugene T. [Signature]  
Notary Public



Certificate of Service

Aug 19, 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

[Signature]